

# **EXHIBIT**

# **A**

5. Jurisdiction in this Court is proper because the Plaintiff resides in this jurisdiction; the property in question is located in this jurisdiction and the acts and omissions giving rise to the action occurred in New Hampshire.
6. Venue is proper in the Superior Court because the amount in controversy exceeds \$1,500.

**FACTS**

7. March 17<sup>th</sup> of 2016 Mr. Bartolomucci purchased a quit claim deed from Mr. Christopher Lapointe and took possession of the home located at 11 Spruce Ridge Drive, Dublin, NH. (See Exhibit A).
8. This purchase came after the Defendant held a foreclosure auction on the property.
9. At the foreclosure sale Federal Home Loan Mortgage Corporation purchased a foreclosure deed.
10. The Foreclosure auction here was unsuccessful to transfer any interest to Federal Home Loan Mortgage.
11. Federal Home Loan Mortgage Corporation later transferred whatever interest they received from that purchase to the Defendant by quitclaim deed. (See Exhibit B).
12. This transaction is highly unusual and serves as evidence that the Defendants are aware of the fact that they do not hold title to the property.
13. Because of the errors made during the holding of the mortgage the Defendant is not entitled to any interest in the property and the foreclosure sale is void on its face.
14. The Mortgage instrument contains several unrepaired issues that void the Defendant's security interest in the property.
15. The Notary signature on the mortgage was signed by a Massachusetts' Notary in the state of New Hampshire. (See Exhibit C).
16. The notary in question has no jurisdiction in the State of New Hampshire which means that the mortgage is essentially unacknowledged.
17. There has been no attempt to remedy this issue despite this error occurring more than 5 years ago.
18. This error invalidates the mortgage and with it the foreclosure auction on the property.
19. Additionally the borrower's (Mr. Lapointe's) marital status on the mortgage is listed as unmarried.

20. The Defendant failed to include a release of the homestead rights of Mr. Lapointe's civil union partner.
21. The Defendant has failed to remedy this issue.
22. At the time of the foreclosure the mortgage foreclosed on was subordinate to a mortgage in favor of TD Bank, NA.
23. A subordination agreement was recorded later, after the foreclosure had already occurred.
24. These deficiencies mean that the Defendant failed to acquire a mortgage and therefore foreclosed without right.
25. The deficiencies in the mortgage are so clear that banks refuse to loan to anyone attempting to purchase whatever interest the Defendants now claim to have.
26. Despite the fact that the Defendant is aware of the issues with its title Defendant has initiated eviction proceedings against the Plaintiff.

### **ARGUMENT**

#### **COUNT I:**

#### **QUIET TITLE- VOID MORTGAGE**

27. The Plaintiff re-allege and incorporate by reference all of the allegations contained herein as if fully stated under this count.
28. RSA 477:3 requires the following: "[e]very deed or other conveyance of real estate shall be signed by the party granting the same acknowledged by the grantor before a justice, notary public or commissioner and show the mailing address of the grantee."
29. Given that the notary signature on this document was made by a Massachusetts notary in the State of New Hampshire, the notary signature is defective to fulfill the obligations under the statute.
30. Given that the mortgage was always void the foreclosure auction held under that mortgage is void as well.

31. As the Defendant gains no interest from the void foreclosure auction then the quitclaim deed from Christopher Lapointe to the Plaintiff served to transfer a full and unencumbered interest to the Plaintiff.
32. The deficiency in the mortgage voids it and renders the foreclosure sale a nullity.

**COUNT II:**  
**QUIET TITLE- HOMESTEAD RIGHT**

33. The Plaintiff re-alleges and incorporates by reference all of the allegations contained herein as if fully stated under this count.
34. By purchasing a quitclaim deed the Plaintiff stepped in to the shoes of the interest belonging to the previous owner of the property.
35. The previous owner's civil union partner did not sign the customary waiver of his homestead rights.
36. Even if the foreclosure sale was effective to transfer title to the property to Federal Home Loan Mortgage contrary to count I of this complaint the previous owner's civil union partner still maintained a \$120,000 interest in the property after the auction which transferred to the Plaintiff by quit claim deed.
37. Given that the Plaintiff is not obligated to the Defendants under the mortgage, this interest in the property is enough to require that the Plaintiffs maintain possession of the property.
38. The Defendants failure to remedy this issue before the foreclosure means that the Plaintiffs were able to purchase the \$120,000 interest from Mr. Lapointe.

**COUNT III:**  
**FRAUD**

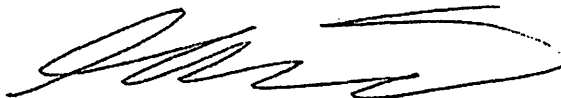
39. The Plaintiff re-alleges and incorporates by reference all of the allegations contained herein as if fully stated under this count.
40. "To establish fraud, a plaintiff must prove that the defendant made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it... In addition, a plaintiff must demonstrate justifiable reliance." Snierson v. Scruton, 145 NH 73, 77 (2000).

41. The Defendant is aware of the deficiencies in their title and the purchase of the interest of Christopher Lapointe by the Plaintiff.
42. Despite that knowledge the Defendants have filed an eviction proceeding claiming that they hold title to the property.
43. The Defendant made this claim with the intent that the district court would rely on it.
44. In issuing it's most recent order the district court has relied on this representation.

WHEREFORE the Plaintiff requests this Honorable Court order the following relief:

- a. Order that the Plaintiff holds clear title to the subject property.
- b. In the alternative order that the Plaintiff holds an interest valued at \$120,000 in the subject property;
- c. Award all lawful damages, costs and attorneys' fees;
- d. Grant such other lawful relief as may be just and equitable.

Respectfully submitted, Plaintiff,  
By His Attorney,



Keith A. Mathews, Esq. (Bar No. 20997)  
Associated Attorneys of N.E.  
587 Union Street  
Manchester, NH 03104  
Tel. 603-622-8100  
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Keith@aaone.law

Doc # 1601933 Mar 17, 2016 2:50 PM  
Book 2938 Page 0688 Page 1 of 2  
Register of Deeds, Cheshire County  
*Alma Z. Tilton*  
Alma Z. Tilton-Register of Deeds



A

Return to:

Mark Bartolomucci  
11 Spruce Ridge  
Dublin, NH 03444  
*AT DESK*

**QUITCLAIM DEED**  
Under RSA 477:28



This quitclaim deed, executed this 17<sup>th</sup> day of March, 2016, by the grantor,

Christopher Lapointe  
~~PO Box 75~~  
Jaffrey, NH 03452

to the grantee,

Mark Bartolomucci  
20 Central Square  
Keene, NH 03431

in exchange for valuable consideration in hand paid, does hereby grant with quitclaim covenants the following property situated in the City/Town of Dublin, County of Cheshire, State of New Hampshire, legally described as:

Lot 50-10  
11 Spruce Ridge Drive, Dublin, New Hampshire 03444.

Tax ID: LUEC-000008-000050-000010.

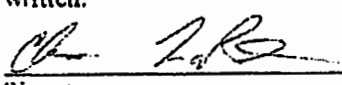
Plan Name: Lot 10, Cabinet 13, Drawer 1, #167

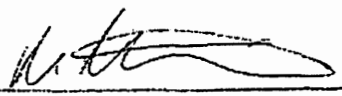
Commonly known as: 11 Spruce Ridge, Dublin, New Hampshire 03444  
Parcel ID: 50-10

☒ Grantor is unmarried.

☐ Grantor is married, and, spouse of the grantor, releases to the grantee all rights of homestead and other interests therein.

It witness whereof, the grantor has signed and sealed these presents on the day first above written.

  
Signature Mr. Christopher Lapointe  
Print name Grantor  
Capacity \_\_\_\_\_

  
Signature Mr. Mark Bartolomucci  
Print name Grautee  
Capacity \_\_\_\_\_

STATE OF New Hampshire  
COUNTY OF Hillsborough

This instrument was acknowledged before me on this 17 day of March, 2016 by

Signature \_\_\_\_\_  
Victoria Hagan  
Title (and Rank) \_\_\_\_\_  
My commission expires \_\_\_\_\_

VICTORIA L. HAGAN  
NOTARY PUBLIC, NEW HAMPSHIRE  
My Commission Expires 11/12/2020





DOCUMENT BOOKS 2943 Page 558 Docket 1603233 Requested by NMS from ret1 at Cheshire County on 08/22/2016

Doc # 1603233 May 5, 2016 9:52 AM  
Book 2943 Page 0558 Page 1 of 4  
Register of Deeds, Cheshire County  
Anna Z. Tilton-Register of Deeds

B

*Return To:*

**AFTER RECORDING RETURN TO:**

Closing USA, LLC  
ATTN: Recording Dept.  
903 Elm Grove Road  
Rochester, NY 14624  
585-454-1730 CL 156639432

**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS: That Federal Home Loan Mortgage Corporation, having a place of business at 8200 Jones Branch Drive, Mc Lean, VA 22102, for consideration paid grants, to PHH Mortgage Corporation with a mailing address of 2001 Bishops Gate Blvd. Attn: Mail Stop SV-01, Mount Laurel, NJ 08054 with QUITCLAIM COVENANTS:

See Attached Exhibit A.

Meaning and intending to describe and convey the same premises conveyed to Federal Home Loan Mortgage Corporation by Foreclosure Deed dated April 24, 2014 and recorded in Book 2909, page 629 at the Cheshire County Registry of Deeds.

0115-00357

DOCUMENT BOOKS 2943 Page 559 Docket 1603233 Requested by NMS from ref1 at Cheshire County on 08/22/2016

Book 2943 Page 0559 Page 2 of 4

IN WITNESS WHEREOF Federal Home Loan Mortgage Corporation has caused this instrument to be signed by its duly authorized officer this 21 day of August, 2015



Federal Home Loan Mortgage Corporation

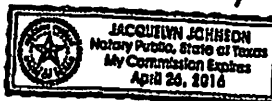
By: *Lynne Fassig*  
 Name: Lynne Fassig  
 Title: Assistant Treasurer

State of TEXAS  
 County of Denton

Date: AUG 21 2015

Before me, the undersigned officer, personally appeared Lynne Fassig proved to me on the satisfactory evidence of identification which was Assistant Treasurer to be the person whose name is signed on the preceding document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

*Jacquelyn Johnson*  
 Notary Public  
 Commission expiration: 4/2016



Re: 11 Spruce Ridge Drive, Dublin, NH 03444

0115-00357

DOCUMENT BOOKS 2679 Page 162 Docket 1011 Requested by NMS from ret1 at Cheshire County on 09/22/2016

BK2679PG0162

C

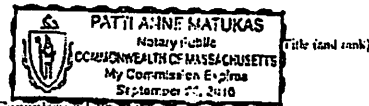
STATE OF NEW HAMPSHIRE  
(County) of CHESHIRE

This instrument was acknowledged before me on January 24th, 2011  
Christopher J LaPointe

by

AKA  
Christophe LaPointe

*Patti Anne Matukas*  
(Signature of Notarial Officer)



My Commission Expires.

CHESHIRE COUNTY  
NOTARY PUBLIC  
1/20/11